

Senate Bill No. 1016

CHAPTER 343

An act to amend Sections 40183, 40184, 41783, 41820.6, 41821, 41850, 42921, and 42926 of, to amend the headings of Article 4 (commencing with Section 41825) and Article 5 (commencing with Section 41850) of Chapter 7 of Part 2 of Division 30 of, to add Sections 40127, 40145, 40150.1, 41780.05, 42921.5, and 42927 to, and to repeal and add Section 41825 of, the Public Resources Code, relating to solid waste.

[Approved by Governor September 26, 2008. Filed with
Secretary of State September 26, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1016, Wiggins. Diversion: compliance: per capita disposal rate.

(1) The California Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, requires each city, county, and regional agency, if any, to develop a source reduction and recycling element of an integrated waste management plan containing specified components. Those entities are required to divert, from disposal or transformation, 50% of the solid waste through source reduction, recycling, and composting subject to the element, except as specified. A city, county, or regional agency is required to submit an annual report to the board summarizing its progress in reducing solid waste. Existing law requires the board to review, at least once every 2 years, a jurisdiction's source reduction and recycling element and household hazardous waste element. The board is required to issue an order of compliance if the board finds that a jurisdiction has failed to implement its source reduction and recycling element or its household hazardous waste element, pursuant to a specified procedure. If, after issuing an order of compliance, the board finds the city, county, or regional agency has failed to make a good faith effort to implement those elements, the board is authorized to impose administrative civil penalties upon the city, county, or regional agency.

This bill would define the terms "diversion program," "jurisdiction," and "multicounty regional agency," for purposes of the act and would revise the definitions of the terms "rural city" and "rural county." The bill would delete the condition that the solid waste subject to source reduction, recycling, and composting under these provisions be diverted from landfill disposal or transformation.

The bill would repeal the board's existing 2-year process. The bill would instead require the board to make a finding whether each jurisdiction was in compliance with the act's diversion requirements for calendar year 2006 and to determine compliance for the 2007 calendar year, and after, based on the jurisdiction's change in its per capita disposal rate. The board would

be required to review a jurisdiction's compliance with those diversion requirements in accordance with a specified schedule, which would be conditioned upon the board finding that the jurisdiction is in compliance with those requirements or has implemented its source reduction and recycling element and household hazardous waste element.

The bill would require the board to issue an order of compliance if the board finds that the jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, pursuant to a specified procedure. The board would be required to comply with certain requirements in making this determination, including considering the extent to which the jurisdiction has maintained its per capita disposal rate.

The bill would repeal this review schedule on January 1, 2018, and, after that date, would require the board to review each jurisdiction's source reduction and recycling element and household hazardous waste element at least once every 2 years.

The bill would revise the information required to be included in the jurisdiction's annual report to the board and would require the report to be submitted to the board electronically. The bill would make conforming changes regarding the compliance order and related enforcement provisions. The bill would impose a state-mandated local program by imposing new duties upon local agencies.

(2) Existing law requires each state agency, as defined, to develop and adopt, in consultation with the board, an integrated waste management plan. Each state agency and large state facility is required to divert at least 50% of the solid waste generated by the state agency or large state facility from landfill disposal or transformation facilities. "State agency" is defined, for purposes of these requirements to include the California Community Colleges.

This bill would require the board to determine if a state agency or large state facility is in compliance with the 50% diversion requirement by comparing the annual per capita disposal rate of the state agency or large state facility with the per capita disposal rate that would be necessary to comply with the 50% diversion requirement. The board would be authorized to consider an agency's or facility's per capita disposal rate as a factor in determining whether the agency or facility is adequately implementing its integrated waste management plan.

The bill would require a community college district to give first priority in the expenditure of the revenues derived from the sale of recyclable materials resulting from implementation of the district's integrated waste management plan for the purposes of offsetting recycling program costs and to expend all cost savings that result from implementation of the district's integrated waste management plan to fund the continued implementation of the plan. A community college district would be required to provide information to the board annually, on the quantities of recyclable materials collected for recycling, according to a schedule determined by the

board and the district. The bill would impose a state-mandated local program by imposing new duties upon community colleges.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that the California Integrated Waste Management Board shall not consider a jurisdiction's per capita disposal rate to be determinative as to whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

SEC. 2. Section 40127 is added to the Public Resources Code, to read:

40127. "Diversion program" means a program in the source reduction and recycling element of a jurisdiction's integrated waste management plan, specified in Chapter 2 (commencing with Section 41000) of, or Chapter 3 (commencing with Section 41300) of, Part 2 and that has the purpose of diverting solid waste from landfill disposal or transformation through source reduction, recycling, and composting activities. "Diversion program" additionally includes any amendments, revisions, or updates to the element, and any programs set forth in a time extension, alternative requirement, or compliance order approved by the board pursuant to Part 2 (commencing with Section 40900).

SEC. 3. Section 40145 is added to the Public Resources Code, to read:

40145. "Jurisdiction" means a city, county, or regional agency that is approved by the board pursuant to Section 40975.

SEC. 4. Section 40150.1 is added to the Public Resources Code, to read:

40150.1. "Multicounty regional agency" means a regional agency, as defined in Section 40181, that includes all of the jurisdictions that are located in at least two or more rural counties.

SEC. 5. Section 40183 of the Public Resources Code is amended to read:

40183. (a) "Rural city" or "rural regional agency" means a city or regional agency that is located within a rural county as defined in Section 40184.

(b) (1) Unless the board takes action pursuant to paragraph (2), this section does not affect any reduction granted to a rural city by the board pursuant to Section 41787 prior to January 1, 2008.

(2) The board may review and take action regarding any reduction granted to a rural city by the board in accordance with subdivision (b) of Section 41787.

SEC. 6. Section 40184 of the Public Resources Code is amended to read:

40184. (a) "Rural county" means a county or multicounty regional agency that annually disposes of no more than 200,000 tons of solid waste.

(b) (1) Unless the board takes action pursuant to paragraph (2), this section does not affect any reduction granted to a rural county by the board pursuant to Section 41787 prior to January 1, 2008.

(2) The board may review and take action regarding any reduction granted to a rural county in accordance with subdivision (b) of Section 41787.

SEC. 7. Section 41780.05 is added to the Public Resources Code, to read:

41780.05. (a) After January 1, 2009, pursuant to the review authorized by Section 41825, the board shall determine each jurisdiction's compliance with Section 41780 for the years commencing with January 1, 2007, by comparing each jurisdiction's change in its per capita disposal rate in subsequent years with the equivalent per capita disposal rate that would have been necessary for the jurisdiction to meet the requirements of Section 41780 on January 1, 2007, as calculated pursuant to subdivisions (c) and (d).

(b) (1) For purposes of paragraph (5) of subdivision (e) of Section 41825, in making a determination whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall consider, but is not limited to the consideration of, the jurisdiction's per capita disposal rate and whether the jurisdiction adequately implemented its diversion programs.

(2) When determining whether a jurisdiction has made a good faith effort pursuant to Section 41825 to implement its source reduction and recycling element or its household hazardous waste element, the board shall consider that an increase in the per capita disposal rate is the result of the amount of the jurisdiction's disposal increasing faster than the jurisdiction's growth. The board shall use this increase in the per capita disposal rate that is in excess of the equivalent per capita disposal rate as a factor in determining whether the board is required, pursuant to Section 41825, to more closely examine a jurisdiction's program implementation efforts. This examination may indicate that a jurisdiction is required to expand existing programs or implement new programs, in accordance with the procedures specified in Article 4 (commencing with Section 41825) and in Article 5 (commencing with Section 41850).

(3) When reviewing the level of program implementation pursuant to Sections 41825 and 41850, the board shall use, as a factor in determining compliance with Section 41780, the amount determined pursuant to subdivision (d) when comparing a jurisdiction's per capita disposal rate in subsequent years.

(c) (1) Except as otherwise provided in this subdivision, for purposes of this section, "per capita disposal" or "per capita disposal rate" means the total annual disposal, in pounds, from a jurisdiction divided by the total population in a jurisdiction, as reported by the Department of Finance, divided by 365 days.

(2) (A) If a jurisdiction is predominated by commercial or industrial activities and by solid waste generation from those sources, the board may alternatively calculate per capita disposal to reflect those differing conditions.

(B) When making a calculation for a jurisdiction subject to this paragraph, “per capita disposal” or “per capita disposal rate” means the total annual disposal, in pounds, from a jurisdiction divided by total industry employment in a jurisdiction, as reported by the Employment Development Department, divided by 365 days.

(C) The board shall calculate the per capita disposal rate for a jurisdiction subject to this paragraph using the level of industry employment in a jurisdiction instead of the level of population in a jurisdiction.

(3) If the board determines that the method for calculating the per capita disposal rate for a jurisdiction provided by paragraph (1) or (2) does not accurately reflect that jurisdiction’s disposal reduction, the board may use an alternative per capita factor, other than population or industry employment, to calculate the per capita disposal rate that more accurately reflects the jurisdiction’s efforts to divert solid waste.

(d) The board shall calculate the equivalent per capita disposal rate for each jurisdiction as follows:

(1) Except as otherwise provided in this subdivision, the equivalent per capita disposal rate for a jurisdiction shall be determined using the method specified in this paragraph.

(A) The calculated generation tonnage for each year from 2003 to 2006, inclusive, shall be multiplied by 0.5 to yield the 50 percent equivalent disposal total for each year.

(B) The 50 percent equivalent disposal total for each year shall be multiplied by 2,000, divided by the population of the jurisdiction in that year, and then divided by 365 to yield the 50 percent equivalent per capita disposal for each year.

(C) The four 50 percent equivalent per capita disposal amounts from the years 2003 to 2006, inclusive, shall be averaged to yield the equivalent per capita disposal rate.

(2) If a jurisdiction is predominated by commercial or industrial activities and by solid waste generation from those sources, the board may alternatively calculate the equivalent per capita disposal rate to reflect those conditions by using the level of industry employment in a jurisdiction instead of the level of population in that jurisdiction.

(3) If the board determines that the method for calculating the equivalent per capita disposal rate for a jurisdiction pursuant to this subdivision does not accurately reflect a jurisdiction’s per capita disposal rate that would be equivalent to the amount required to meet the 50 percent diversion requirements of Section 41780, the board may use an alternative per capita factor, other than population or industry employment, to calculate the equivalent per capita disposal rate that more accurately reflects the jurisdiction’s diversion efforts.

(4) The board shall modify the percentage used in paragraph (1) to maintain the diversion requirements approved by the board for a rural jurisdiction pursuant to Section 41787 or for a reduction granted pursuant to Section 41786.

(5) The board may modify the years included in making a calculation pursuant to this subdivision for an individual jurisdiction to eliminate years in which the calculated generation amount is shown not to be representative or accurate, based upon a generation study completed in one of the five years 2003 to 2007, inclusive. In these cases, the board shall not allow the use of an additional year other than 2003, 2004, 2005, 2006, or 2007.

(6) The board may modify the method of calculating the equivalent per capita disposal rate for an individual jurisdiction to accommodate the incorporation of a new city, the formation of a new regional agency, or changes in membership of an existing regional agency. These modifications shall ensure that a new entity has a new equivalent per capita disposal rate and that the existing per capita disposal rate of an existing entity is adjusted to take into account the disposal amounts lost by the creation of the new entity.

(7) The board shall not incorporate generation studies or new base year calculations for a year commencing after 2006 into the equivalent per capita disposal rate, unless a generation study that included the year 2007 was commenced on or before June 30, 2008.

(8) If the board determines that the equivalent per capita disposal rate cannot accurately be determined for a jurisdiction, or that the rate is no longer representative of a jurisdiction's waste stream, the board shall evaluate trends in the jurisdiction's per capita disposal to establish a revised equivalent per capita disposal rate for that jurisdiction.

SEC. 8. Section 41783 of the Public Resources Code is amended to read:

41783. (a) For a jurisdiction's source reduction and recycling element submitted to the board after January 1, 1995, and on or before January 1, 2009, the 50 percent diversion requirement specified in paragraph (2) of subdivision (a) of Section 41780 may include not more than 10 percent through transformation, as defined in Section 40201, if all of the following conditions are met:

(1) The transformation project is in compliance with Sections 21151.1 and 44150 of this code and Section 42315 of the Health and Safety Code.

(2) The transformation project uses front-end methods or programs to remove all recyclable materials from the waste stream prior to transformation to the maximum extent feasible.

(3) The ash or other residue generated from the transformation project is routinely tested at least once quarterly, or on a more frequent basis as determined by the agency responsible for regulating the testing and disposal of the ash or residue, and, notwithstanding Section 25143.5 of the Health and Safety Code, if hazardous wastes are present, the ash or residue is sent to a class 1 hazardous waste disposal facility.

(4) The board holds a public hearing in the city, county, or regional agency jurisdiction within which the transformation project is proposed, and, after the public hearing, the board makes both of the following findings, based upon substantial evidence on the record:

(A) The city, county, or regional agency is, and will continue to be, effectively implementing all feasible source reduction, recycling, and composting measures.

(B) The transformation project will not adversely affect public health and safety or the environment.

(5) The transformation facility is permitted and operational on or before January 1, 1995.

(6) The city, county, or regional agency does not include biomass conversion, as authorized pursuant to Section 41783, in its source reduction and recycling element.

(b) On and after January 1, 2009, for purposes of the review authorized by Section 41825, with regard to a jurisdiction's compliance with Section 41780 for each year commencing January 1, 2007, the board may reduce the per capita disposal rate for a jurisdiction, as calculated pursuant to subdivision (d) of Section 41780.05, by no more than 10 percent of the average of the calculated per capita generation tonnage amount, if the jurisdiction otherwise meets the substantive requirements specified in paragraphs (1) to (6), inclusive, of subdivision (a), for solid waste to be included as diversion for purposes of that subdivision.

SEC. 9. Section 41820.6 of the Public Resources Code is amended to read:

41820.6. (a) In addition to its authority under Section 41820, the board may, after a public hearing, grant a time extension from the requirements of Section 41780 to a city if both of the following conditions exist:

(1) The city was incorporated pursuant to Division 3 (commencing with Section 56000) of Title 5 of the Government Code on or after January 1, 2001.

(2) The county within which the city is located did not include provisions in its franchises that ensured that the now incorporated area would comply with the requirements of Section 41780.

(b) The board may authorize a city that meets the requirements of subdivision (a) to submit a source reduction and recycling element that includes an implementation schedule that shows that the city shall comply with the requirements of Section 41780, within three years from the date on which the source reduction and recycling element is due pursuant to subdivision (b) of Section 41791.5, through source reduction, recycling, and composting activities.

SEC. 10. Section 41821 of the Public Resources Code is amended to read:

41821. (a) (1) Each year following the board's approval of a jurisdiction's source reduction and recycling element, household hazardous waste element, and nondisposal facility element, the jurisdiction shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 41780, in accordance with the schedule set forth in this subdivision.

(2) The annual report shall be due on or before August 1 of the year following board approval of the source reduction and recycling element,

the household hazardous waste element, and the nondisposal facility element, and on or before August 1 in each subsequent year. The information in this report shall encompass the previous calendar year, January 1 to December 31, inclusive.

(b) Each jurisdiction's annual report to the board shall, at a minimum, include the following:

(1) Calculations of annual disposal reduction.

(2) A summary of progress made in implementing the source reduction and recycling element and the household hazardous waste element.

(3) An update of the jurisdiction's source reduction and recycling element and household hazardous waste element to include any new or expanded programs the jurisdiction has implemented or plans to implement.

(4) An update of the jurisdiction's nondisposal facility element to reflect any new or expanded nondisposal facilities the jurisdiction is using or planning to use.

(5) A summary of progress made in diversion of construction and demolition of waste material, including information on programs and ordinances implemented by the local government and quantitative data, where available.

(6) Other information relevant to compliance with Section 41780.

(c) A jurisdiction may also include, in the report required by this section, all of the following:

(1) Information on disposal reported pursuant to Section 41821.5 that the jurisdiction believes may be relevant to the board's determination of the jurisdiction's per capita disposal rate.

(2) Disposal characterization studies or other completed studies that show the effectiveness of the programs being implemented.

(3) Factors that the jurisdiction believes would affect the accuracy of, or mitigate the amount of, solid waste disposed by the jurisdiction, including, but not limited to, either of the following:

(A) Whether the jurisdiction hosts a solid waste facility or regional diversion facility.

(B) The effects of self-hauled waste and construction and demolition waste.

(4) The extent to which the jurisdiction previously relied on biomass diversion credit and the extent to which it may be impacted by the lack of the credit.

(5) Information regarding the programs the jurisdiction is undertaking to address specific disposal challenges, and why it is not feasible to implement programs to respond to other factors that affect the amount of waste that is disposed.

(6) Other information that describes the good faith efforts of the jurisdiction to comply with Section 41780.

(d) The board shall use, but is not limited to the use of, the annual report in the determination of whether the jurisdiction's source reduction and recycling element needs to be revised or updated.

(e) (1) The board shall adopt procedures for requiring additional information in a jurisdiction's annual report. The procedures shall require the board to notify a jurisdiction of any additional required information no later than 120 days after the board receives the report from the jurisdiction.

(2) Paragraph (1) does not prohibit the board from making additional requests for information in a timely manner. A jurisdiction receiving a request for information shall respond in a timely manner.

(3) If the schedule for the submission of an annual report by a jurisdiction does not correspond with the scheduled review by the board specified in subdivision (a) of Section 41825, the board shall utilize the information contained in the annual report to assist the board in providing technical assistance and reviewing the jurisdiction's diversion program implementation.

(f) The board shall adopt procedures for conferring with a jurisdiction regarding the implementation of its diversion programs.

(g) Notwithstanding the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code), a jurisdiction shall submit the progress report required by this section to the board electronically, using the board's electronic reporting format system.

(h) Notwithstanding the reporting schedule required by this section, and in addition to the review required by Section 41825, the board shall visit each jurisdiction not less than once each year to monitor the jurisdiction's implementation and maintenance of its diversion programs.

SEC. 11. The heading of Article 4 (commencing with Section 41825) of Chapter 7 of Part 2 of Division 30 of the Public Resources Code is amended to read:

Article 4. Review and Compliance Orders

SEC. 12. Section 41825 of the Public Resources Code is repealed.

SEC. 13. Section 41825 is added to the Public Resources Code, to read:

41825. (a) Using the information in the report submitted to the board by the jurisdiction pursuant to Section 41821 and any other relevant information, the board shall make a finding whether each jurisdiction was in compliance with Section 41780 for calendar year 2006 and shall review a jurisdiction's compliance with Section 41780 in accordance with the following schedule:

(1) If the board makes a finding that the jurisdiction was in compliance with Section 41780 for calendar year 2006, the board shall review, commencing January 1, 2012, and at least once every four years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(2) If the board makes a finding that the jurisdiction made a good faith effort to implement its source reduction and recycling element and household hazardous waste element, the board shall review, commencing January 1,

2010, and at least once every two years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(3) If the board makes a finding that the jurisdiction was not in compliance with Section 41780 for calendar year 2006 or for any subsequent calendar year, the board shall review, commencing January 1, 2010, and at least once every two years thereafter, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element.

(4) If, after determining that a jurisdiction is subject to paragraph (2), or, if, after determining that a jurisdiction is not in compliance with Section 41780 and is subject to paragraph (3), the board subsequently determines that the jurisdiction has come into compliance with Section 41780, the board shall review, at least once every four years, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste in the same manner as a jurisdiction that is subject to paragraph (1).

(5) If, after determining that a jurisdiction is in compliance with Section 41780 and is subject to paragraph (1), the board subsequently determines that the jurisdiction is not in compliance with Section 41780, the board shall review, at least once every two years, whether the jurisdiction has implemented its source reduction and recycling element and household hazardous waste element in the same manner as a jurisdiction that is subject to paragraph (2) or (3).

(b) In addition to the requirements of subdivision (a), the board may review whether a jurisdiction is in compliance with Section 41780 in accordance with the requirements of this section at any time that the board receives information that indicates the jurisdiction may not be making a good faith effort to implement its source reduction and recycling element and household hazardous waste element.

(c) (1) Before issuing a compliance order pursuant to subdivision (d), the board shall confer with the jurisdiction regarding conditions relating to the proposed order of compliance, with a first meeting occurring not less than 60 days before issuing a notice of intent to issue an order of compliance.

(2) The board shall issue a notice of intent to issue an order of compliance not less than 30 days before the board holds a hearing to issue the notice of compliance. The notice of intent shall specify all of the following:

(A) The proposed basis for issuing an order of compliance.

(B) The proposed actions the board recommends are necessary for the jurisdiction to complete to implement its source reduction and recycling element or household hazardous waste element.

(C) The proposed recommendations to the board.

(3) The board shall consider any information provided pursuant to subdivision (c) of Section 41821 if the proposed issuance of an order of compliance involves changes to a jurisdiction's calculation of annual disposal.

(d) (1) If, after holding a public hearing, which, to the extent possible, shall be held in the local or regional agency's jurisdiction, the board finds that a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall issue an order of compliance with a specific schedule for achieving compliance.

(2) The compliance order shall include those conditions that the board determines to be necessary for the jurisdiction to implement its diversion programs.

(3) In addition to considering the good faith efforts of a jurisdiction, as specified in subdivision (e), to implement a diversion program, the board shall consider both of the following factors in determining whether or not to issue a compliance order:

(A) Whether an exceptional growth rate may have affected compliance.

(B) Other information that the jurisdiction may provide that indicates the effectiveness of the jurisdiction's programs, such as disposal characterization studies or other jurisdiction specific information.

(e) For purposes of making a determination pursuant to this section whether a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall consider all of the following criteria:

(1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) For purposes of this section, "good faith effort" may also include the evaluation by a jurisdiction of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the jurisdiction to adequately address all sources of significant disposal, the submission by the jurisdiction of a compliance schedule, and the undertaking of all other reasonable and feasible efforts to implement the programs identified in the jurisdiction's source reduction and recycling element or household hazardous waste element.

(3) In determining whether a jurisdiction has made a good faith effort, the board shall consider the enforcement criteria included in its enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

(4) The board shall consider all of the following when considering whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element:

(A) Natural disasters.

(B) Budgetary conditions within a jurisdiction that could not be remedied by the imposition or adjustment of solid waste fees.

(C) Work stoppages that directly prevent a jurisdiction from implementing its source reduction and recycling element or household hazardous waste element.

(D) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction.

(E) The extent to which the jurisdiction has implemented additional source reduction, recycling, and composting activities.

(F) The extent to which the jurisdiction has made program implementation choices driven by considerations related to other environmental issues, including climate change.

(G) Whether the jurisdiction has provided information to the board concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance pursuant to subdivision (a) of Section 42912 for diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.

(H) The extent to which the jurisdiction has implemented programs to comply with Section 41780 and to maintain its per capita disposal rate.

(5) In making a determination whether a jurisdiction has made a good faith effort, pursuant to this section, the board may consider a jurisdiction's per capita disposal rate as a factor in determining whether the jurisdiction adequately implemented its diversion programs. The board shall not consider a jurisdiction's per capita disposal rate to be determinative as to whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

(f) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 14. Section 41825 is added to the Public Resources Code, to read:

41825. (a) At least once every two years, the board shall review each jurisdiction's source reduction and recycling element and household hazardous waste element for compliance with Section 41780.

(b) In addition to the requirements of subdivision (a), the board may review whether a jurisdiction is in compliance with Section 41780 in accordance with the requirements of this section at any time that the board receives information that indicates the jurisdiction may not be making a good faith effort to implement its source reduction and recycling element and household hazardous waste element.

(c) (1) Before issuing a compliance order pursuant to subdivision (d), the board shall confer with the jurisdiction regarding conditions relating to the proposed order of compliance, with a first meeting occurring not less than 60 days before issuing a notice of intent to issue an order of compliance.

(2) The board shall issue a notice of intent to issue an order of compliance not less than 30 days before the board holds a hearing to issue the notice of compliance. The notice of intent shall specify all of the following:

(A) The proposed basis for issuing an order of compliance.

(B) The proposed actions the board recommends are necessary for the jurisdiction to complete the implementation of its source reduction and recycling element or household hazardous waste element.

(C) The proposed recommendations to the board.

(3) The board shall consider any information provided pursuant to subdivision (c) of Section 41821, if the proposed issuance of an order of compliance involves changes to a jurisdiction's calculation of annual disposal.

(d) (1) If, after holding a public hearing, which, to the extent possible, shall be held in the local or regional agency's jurisdiction, the board finds that a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall issue an order of compliance with a specific schedule for achieving compliance.

(2) The compliance order shall include those conditions that the board determines to be necessary for the jurisdiction to implement its diversion programs.

(3) In addition to considering the good faith efforts of a jurisdiction, as specified in subdivision (e), to implement a diversion program, the board shall consider all of the following factors in determining whether or not to issue a compliance order:

(A) Whether an exceptional growth rate may have affected compliance.

(B) Other information that the jurisdiction may provide that indicates the effectiveness of the jurisdiction's programs, such as disposal characterization studies or other jurisdiction specific information.

(e) For purposes of making a determination pursuant to this section as to whether a jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board shall consider all of the following criteria:

(1) For the purposes of this section, "good faith effort" means all reasonable and feasible efforts by a jurisdiction to implement those programs or activities identified in its source reduction and recycling element or household hazardous waste element, or alternative programs or activities that achieve the same or similar results.

(2) For purposes of this section, "good faith effort" may also include the evaluation by a jurisdiction of improved technology for the handling and management of solid waste that would reduce costs, improve efficiency in the collection, processing, or marketing of recyclable materials or yard waste, and enhance the ability of the jurisdiction to adequately address all sources of significant disposal, the submission by the jurisdiction of a compliance schedule, and the undertaking of all other reasonable and feasible efforts to implement the programs identified in the jurisdiction's source reduction and recycling element or household hazardous waste element.

(3) In determining whether a jurisdiction has made a good faith effort, the board shall also consider the enforcement criteria included in its

enforcement policy, as adopted on April 25, 1995, or as subsequently amended.

(4) The board shall consider all of the following when considering whether a jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element:

(A) Natural disasters.

(B) Budgetary conditions within a jurisdiction that could not be remedied by the imposition or adjustment of solid waste fees.

(C) Work stoppages that directly prevent a jurisdiction from implementing its source reduction and recycling element or household hazardous waste element.

(D) The impact of the failure of federal, state, and other local agencies located within the jurisdiction to implement source reduction and recycling programs in the jurisdiction.

(E) The extent to which the jurisdiction has implemented additional source reduction, recycling, and composting activities.

(F) The extent to which the jurisdiction has made program implementation choices driven by considerations related to other environmental issues, including climate change.

(G) Whether the jurisdiction has provided information to the board concerning whether construction and demolition waste material is at least a moderately significant portion of the waste stream, and, if so, whether the local jurisdiction has adopted an ordinance for diversion of construction and demolition waste materials from solid waste disposal facilities, has adopted a model ordinance pursuant to subdivision (a) of Section 42912 for diversion of construction and demolition waste materials from solid waste disposal facilities, or has implemented another program to encourage or require diversion of construction and demolition waste materials from solid waste disposal facilities.

(H) The extent to which the jurisdiction has implemented programs to comply with Section 41780 and to maintain its per capita disposal rate.

(5) In making a determination whether a jurisdiction has made a good faith effort, pursuant to this section, the board may consider a jurisdiction's per capita disposal rate as a factor in determining whether the jurisdiction adequately implemented its diversion programs. The board shall not consider a jurisdiction's per capita disposal rate to be determinative as to whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element.

(f) This section shall become operative on January 1, 2018.

SEC. 15. The heading of Article 5 (commencing with Section 41850) of Chapter 7 of Part 2 of Division 30 of the Public Resources Code is amended to read:

Article 5. Enforcement and Penalties

SEC. 16. Section 41850 of the Public Resources Code is amended to read:

41850. (a) Except as specifically provided in Section 41813, if, after holding the public hearing and issuing an order of compliance pursuant to Section 41825, the board finds that the jurisdiction has failed to make a good faith effort to implement its source reduction and recycling element or its household hazardous waste element, the board may impose administrative civil penalties upon the city or county or, pursuant to Section 40974, upon the city or county as a member of a regional agency, of up to ten thousand dollars (\$10,000) per day until the jurisdiction implements the element.

(b) In determining whether or not to impose any penalties, or in determining the amount of any penalties imposed under this section, including any penalties imposed due to the exclusion of solid waste pursuant to Section 41781.2 that results in a reduction in the quantity of solid waste diverted by a jurisdiction, the board shall consider whether the jurisdiction has made a good faith effort to implement its source reduction and recycling element or its household hazardous waste element. In addition, the board shall consider only those relevant circumstances that have prevented a jurisdiction from meeting the requirements of this division, including, but not limited to, the factors described in subdivisions (d) and (e) of Section 41825.

SEC. 17. Section 42921 of the Public Resources Code is amended to read:

42921. (a) Each state agency and each large state facility shall divert at least 25 percent of all solid waste generated by the state agency by January 1, 2002, through source reduction, recycling, and composting activities.

(b) On and after January 1, 2004, each state agency and each large state facility shall divert at least 50 percent of all solid waste through source reduction, recycling, and composting activities.

SEC. 18. Section 42921.5 is added to the Public Resources Code, to read:

42921.5. (a) After January 1, 2009, the board shall determine each state agency's or a large state facility's compliance with Section 42921, for each year, commencing with January 1, 2007, by comparing the per capita disposal rate in subsequent years with the equivalent per capita disposal rate that would have been necessary for the state agency or large state facility to comply with Section 42921 on January 1, 2007, as calculated pursuant to subdivision (d).

(b) In making a determination whether a state agency or large state facility is in compliance with the requirements of Section 42921, the board may consider an agency's or facility's per capita disposal rate as a factor in determining whether the state agency or large state facility is adequately implementing its integrated waste management plan. The board shall not consider a state, agency, or large state facility's per capita disposal rate to be determinative when considering whether the agency or facility is implementing its integrated waste management plan.

(c) When determining whether an agency or facility is in compliance with Section 42921, the board shall consider that an increase in the per capita disposal rate is a result of disposal amounts increasing faster than the growth of the state agency or large state facility. The board shall use an increase in the per capita disposal rate that is in excess of the equivalent per capita disposal rate as a factor in determining whether the board is required to more closely examine the agency's or facility's plan implementation efforts. If indicated by this examination, the board may require a state agency or large state facility to expand existing programs or implement new programs.

(d) (1) Except as provided in paragraph (2), "per capita disposal" or "per capita disposal rate" means the total annual disposal by a state agency or large state facility, in pounds, divided by total number of employees in that state agency or large state facility, and divided by 365 days.

(2) The board may alternatively define per capita disposal or per capita disposal rate for a state agency or large state facility that has a significant amount of disposal from nonemployees or for other reasons that would make calculation of per capita disposal by the number of employees inaccurate.

SEC. 19. Section 42926 of the Public Resources Code is amended to read:

42926. (a) In addition to the information provided to the board pursuant to Section 12167.1 of the Public Contract Code, each state agency shall submit an annual report to the board summarizing its progress in reducing solid waste as required by Section 42921. The annual report shall be due on or before September 1, 2009, and on or before September 1 in each subsequent year. The information in this report shall encompass the previous calendar year.

(b) Each state agency's annual report to the board shall, at a minimum, include all of the following:

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors.

(3) A summary of progress made in implementing the integrated waste management plan.

(4) The extent to which the state agency intends to utilize programs or facilities established by the local agency for the handling, diversion, and disposal of solid waste. If the state agency does not intend to utilize those established programs or facilities, the state agency shall identify sufficient disposal capacity for solid waste that is not source reduced, recycled, or composted.

(5) Other information relevant to compliance with Section 42921.

(c) The board shall use, but is not limited to the use of, the annual report in the determination of whether the agency's integrated waste management plan needs to be revised.

SEC. 20. Section 42927 is added to the Public Resources Code, to read:

42927. (a) A community college district shall give first priority for the expenditure of the revenues derived from the sale of recyclable materials resulting from the implementation of the district's integrated waste management plan for the purposes of offsetting the recycling program costs imposed pursuant to this chapter.

(b) A community college district shall expend all cost savings that result from implementation of the district's integrated waste management plan pursuant to this chapter to fund the continued implementation of the plan consistent with the requirement that revenues from the sale of recyclable materials be used to offset recycling program costs, as specified in Sections 12167 and 12167.1 of the Public Contract Code.

(c) A community college district shall provide information on the quantities of recyclable materials collected for recycling annually to the board, according to a schedule determined by the board and the district.

SEC. 21. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because the act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.